

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FLATS CHICAGO LLC,)	
)	
Plaintiff,)	Case No. 15-cv-7858
)	
v.)	
)	
WICKER PARK APARTMENTS, INC.)	
)	
Defendant.)	

COMPLAINT

NOW COMES the Plaintiff, FLATS CHICAGO LLC, an Illinois limited liability company (“Flats”) by and through its attorneys, Jayaram Law Group Ltd., and in support of its Complaint against Defendant WICKER PARK APARTMENTS, INC., states as follows:

The Parties

1. Flats Chicago LLC (“Flats”) is an Illinois limited liability company with its principal place of business in Chicago, Illinois.
2. Wicker Park Apartments, Inc., is an Illinois corporation with its principal place of business in Chicago, Illinois, developing a project named River West Flats (“River West Flats”).

Jurisdiction & Venue

3. This court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331 in that this action involves questions of federal law pursuant to 28 U.S.C. §§ 1338(a) and 1338(b) involving federal claims for trademark infringement, unfair competition and false designation of origin.
4. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2) since Wicker Park Apartments, Inc., resides in this District and a substantial part of the events giving rise to the claims occurred in this District.

Factual Background

6. In or about June 2012, Flats began using the trademark FLATS in connection with real estate development services. Flats has been using the trademark FLATS continuously in interstate commerce as a source identifier since its date of first use.

7. Flats' has been developing real estate properties primarily in the Uptown neighborhood of Chicago since 2012. Flats' mission is to bring big style in smart spaces by delivering high quality, amenity rich, and authentic environments at approachable rents. Residents, media outlets, and others associate Flats with the Uptown and surrounding neighborhoods of Chicago, and Flats continues to be a growing mainstay in those north side neighborhoods.

8. Flats' real estate properties in Chicago bearing the Flats Marks trademark include: 4875 N. Magnolia, 1020 W. Lawrence, 1325 Wilson, 5718 N. Winthrop, 5411 N. Winthrop, 5051 N. Kenmore, 4875 N. Magnolia, 6134 N. Kenmore, and 676 N. LaSalle.

9. Flats is the owner of federal trademark registration number 4531027 for FLATS



and federal trademark registration number 4593546 for the Flat's design mark:

and has a pending application for federal trademark serial number 86425916 for FLATS (collectively, the "Flats Marks").

10. FLATS and the Flats Marks have acquired secondary meaning since their respective first uses in 2012.

11. Flats is well-known for purchasing neglected buildings, renovating them and converting them into affordable mixed-used properties.

12. As demonstrated in greater detail in over 140 press mentions annexed hereto as Exhibit A, Flats has received national acclaim for years, as reflected in media outlets such as Bloomberg, Bravo TV, Crain's Business, Chicago Sun-Times, Chicago Home & Garden, and Renovation Style. Co-branding synergies with national retailers such as CB2 (Crate and Barrel) and others have further propagated the Flats brand, particularly the FLATS trademark. By offering a visible, packaged, and consistently high quality rental unit and a professionally managed building regardless of which Flats product they live in.

13. In addition, Jay Michael, the principal of Flats, had his own television show on Bravo in which he promoted the Flats Marks on a national basis to a national television audience.

14. Since 2012, Flats has spent nearly \$600,000.00 in advertising, promoting and marketing and using the FLATS trademark and/or the Flats Marks in Chicago and around the country. As a result, FLATS and the Flats Marks are a well-known, trusted, and highly-recognizable property development brand.

15. On or about August 20, 2015 Flats learned via an article published by Curbed Chicago, a local news source, that River West Flats is developing a property at 710 West Grand Avenue, in the River West neighborhood of Chicago branded "River West Flats". The River West neighborhood is slightly southwest of the Uptown neighborhood where Flats has been using its marks and operating similar properties for years, and less than a mile from a Flats development in River North. A copy of the article titled "Another Transit-Oriented Development Is Being Planned Along the Blue Line" is attached and incorporated as Exhibit B. River West

Flats' uses the Flats Mark without consent, license, or authority as a trademark in connection with its real estate project.

16. According to the article published on August 20, 2015, River West Flats is in the early stages of the development process. River West Flats' properties bearing the infringing uses of the Flats Marks are located approximately one mile from a planned Flats property in Chicago's River North Neighborhood.

17. Following the publishing of this article, Flats began receiving phone calls from confused individuals and consumers looking for information about "its new project" at 710 West Grand Avenue in the River West neighborhood, mistakenly and confusingly believing that Flats was the developer of the property (rather than River West Flats, the real developer).

18. River West Flats' use of the Flats Marks for its new project on West Grand Avenue infringes upon Flat's federally registered marks and common law marks because, among other things, the marks are nearly identical, used in the same or similar channels of trade and are likely to cause (and, in some cases, have caused) consumer confusion.

19. River West Flats' use of the mark Flats is, upon information and belief, in bad faith with intent to profit and trade off the good-will of the FLATS trademark.

20. River West Flats is using the mark Flats while conducting trade or commerce to derive an economic benefit for itself.

**FIRST CLAIM FOR RELIEF
(Trademark Infringement 15 U.S.C. §1114(1))**

21. Flats incorporates and re-alleges paragraphs 1-20 as though fully stated herein.

22. River West Flats' current and planned future use of the mark Flats in connection with its real estate development project is likely to cause confusion, mistake, or to deceive as to

the affiliation, connection or association of River West Flats with Flats, or as to the origin, sponsorship, or approval of River West Flats' products and services.

23. Upon information and belief, River West Flats' unauthorized use of the FLATS trademark and the complained-of acts herein is willful and knowing and done with the intention of trading upon the valuable goodwill of Flats' trademarks.

24. River West Flats' current and planned use of the mark Flats jeopardizes the goodwill of the Flats Marks (both registered and common law rights), and causes serious and irreparable injury to the FLATS brand and will continue to cause such harm, damage and injury to Flats unless River West Flats' use of the Flats Marks is preliminarily and permanently enjoined.

SECOND CLAIM FOR RELIEF
(False Designation of Origin, 15 U.S.C. §1125 (a))

25. Flats incorporates and re-alleges paragraphs 1-24 as though fully stated herein.

26. River West Flats' use of the mark Flats for its real estate development project is likely to cause confusion, mistake, or to deceive as to the affiliation, connection or association of River West Flats with Flats, or as to the origin, sponsorship or approval of River West Flats' goods and services or commercial activity in violation of Flats' rights within the meaning of 15 U.S.C. § 1125(a).

27. River West Flats' use of the mark Flats constitutes a false or misleading description or representation in violation of §43(a) of the Lanham Act.

28. Upon information and belief, River West Flats' unauthorized use of one or more of the Flats Marks and the complained-of acts herein is willful and knowing and done with the intention of trading upon the valuable goodwill built up in the Flats' trademarks and brand, or otherwise injuring Flats.

29. River West Flats' current and planned use of the mark Flats has caused irreparable harm, damage and injury to Flats and will continue to cause such harm, damage and injury to Flats unless River West Flats' use of the Flats Marks is preliminarily and permanently enjoined.

THIRD CLAIM FOR RELIEF
(Violation of the Illinois Uniform Deceptive Trade Practices Act – 815 ILCS § 505)

30. Flats incorporates and re-alleges paragraphs 1-29 as though fully stated herein.

31. River West Flats' current and planned use of the mark Flats constitutes unfair or deceptive acts or practices within the meaning of 815 ILCS § 510/1 et seq.

32. River West Flats' current and planned use of the mark Flats in connection with its real estate development project causes likelihood of confusion of or misunderstanding as to its affiliation, connection, or association with Flats.

33. River West Flats' actions disparage the goods, services and business of Flats by making false or misleading factual representations.

34. Upon information and belief, River West Flats has willfully engaged in the unlawful acts described herein with wanton, reckless and in total disregard for Flats' rights of trademark infringement and unfair competition.

35. Such actions constitute a violation of 815 ILCS 510/2, and Flats is entitled to damages for the same.

FOURTH CLAIM FOR RELIEF
Common Law Unfair Competition

36. Flats incorporates and re-alleges paragraphs 1-35 as though fully stated herein.

37. Upon information and belief, River West Flats knowingly used and is directly benefitting from the current and planned use of the mark Flats.

38. River West Flats' current and planned use of Flats is "in commerce" within the meaning ascribed by Illinois common law and federal trademark law.

39. River West Flats' current and planned use of Flats is likely to cause confusion, or to cause mistake, or to deceive consumers.

40. Upon information and belief, River West Flats' acts are willful and knowing.

41. River West Flats' current and planned use of the mark Flats has caused irreparable harm, damage and injury to Flats and will continue to cause such harm, damage and injury to Flats unless River West Flats' use of Flats is preliminarily and permanently enjoined.

PRAYER FOR RELIEF

WHEREFORE, Flats Chicago LLC requests that this Court enter judgment in its favor and against Wicker Park Apartments, Inc., on all four Counts alleged herein and that this Court:

- a. Find that River West Flats committed acts of infringement of Flats' trademarks, including one or more of the Flats Marks;
- b. Find that River West Flats engaged in unfair competition detrimental to Flats in violation of 15 U.S.C. §1125(a)
- c. Enter judgment against River West Flats and in favor of Flats on all applicable counts;
- d. Find the acts of River West Flats were willful and knowing and for profit;
- e. Award to Flats statutory damages per trademark infringed;
- f. Award to Flats treble, punitive, or otherwise enhanced damages and attorneys fees, as available, for acts of willful infringement;

- g. Preliminary and permanently enjoin River West Flats and its employees, agents and servants, and any person in active concert with them from using the mark Flats and any other trademark, service mark, trade name or domain name which is confusingly similar to FLATS and/or any of the Flats Marks; and
- h. Award to Flats its costs and attorneys' fees to the extent not awarded above; and
- i. Grant Flats such other and further relief as justice may require.

Respectfully Submitted,

/s/ Vivek Jayaram, Esq.

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